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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-177580

August 21, 1973

Mr. Royal L. Sims, National Vice President
American Federation of Government Employees
4742 North Broad Street
Philadelphia, Pennsylvania 19141

Dear Mr. Sims:

Reference is made to your letter dated March 10, 1972, reference L/1902, requesting on behalf of James H. Slattery, Robert A. Kailman, Helen H. Mulhearn, Massimo J. Tecco, Arthur J. Morten, Elvin J. Morrow, John Brennan, and John E. Zvirblis, employees of the Defense Supply Agency (DSA), that we reconsider their claims for additional pay for the performance of hazardous duty.

The eight employees involved are assigned by Defense Contract Administration Services Region, Philadelphia, to quality control duties at the facilities of Atlas Chemical Industries, Incorporated, a Government contractor, to assure that ammunition items accepted for the Government from the contractor meet all contractual requirements. In requesting the hazardous pay differential for these employees, Mr. Slattery stated in the claim he submitted to his agency on October 6, 1969, that the employees' "specific duties on an explosive operating line are to perform inspection of the consecutive steps in the manufacturing of detonators, primers, fuses, igniters, boosters, squibs, leads, explosive missile hardware, manufacture of explosive powder, reefer line cutters, actuators, and gas generators." Thus it appears that in performing their duties these employees are necessarily exposed or in close proximity to explosive and incendiary materials which are generally considered to be unstable and highly sensitive. Accordingly, they contend that they are entitled to a hazardous pay differential.

Our settlement letters of December 28, 1971, disallowed the employees' claims stating that there is no basis for payment of a hazardous pay differential under 5 U.S.C. 5545(d), since the hazardous duties of the claimants were neither irregular nor intermittent and since the hazard involved in the performance of their duties appeared to have been a factor in fixing the grades of their positions and in determining the necessary qualifications for appointment to such positions. You have taken exception to the finding that the hazard involved was or appeared to be a factor in fixing the grades of the employees' positions and request further factual substantiation for this finding.

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Section 5545(d) of title 5 of the United States Code provides in pertinent part:

"The Commission shall establish a schedule or schedules of pay differentials for irregular or intermittent duty involving unusual physical hardship or hazard. Under such regulations as the Commission may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

"(1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof; and

"(2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee."

In implementing the above provision, section 550.904 of the Civil Service Regulations (5 CFR 550.904) provides:

"(a) An agency shall pay the hazard pay differential listed in Appendix A to an employee who is assigned to and performs any irregular or intermittent duty specified in the appendix when that duty is not usually involved in carrying out the duties of his position. Hazard pay differential may not be paid an employee when the hazardous duty has been taken into account in the classification of his position.

"(b) For the purpose of this section:

"(1) 'Not usually involved in carrying out the duties of his position' means that even though the hazardous duty may be embraced within the employee's

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position description it is not performed with sufficient regularity to constitute an element in fixing the grade of the position.

"(2) 'Has been taken into account in the classification of his position' means that the duty constitutes an element used in establishing the grade of the position."

In this context "position" is defined as "* * * the work consisting of the duties and responsibilities, assigned by competent authority for performance by an employee." 5 CFR 511.101(e).

In the present case Mr. Slattery in his request for the hazardous pay differential stated that the inspectors concerned "are exposed 100 percent of their inspection time to the hazard of a major explosion, or suffer possible injury as a result of minor explosion (accidental) while performing or witnessing tests." Furthermore, the report of a survey team appointed to review the hazards involved in the claimants' jobs included a determination that the time spent by the employees performing duties which exposed them to explosive materials accounted for 86 percent of their working hours with the remaining hours spent in the office and for travel between buildings and in the manufacturer's complex. The survey team which issued that report included Mr. Slattery as well as administrative and technical personnel of the Defense Supply Agency and the contractor. Conclusions as to the time spent on hazardous duties were based on official reports of the duties performed for the period of July 1969 through May 1970. Thus the present record clearly indicates that the duties performed by each of the employees which expose him to explosive materials are performed regularly on a day-to-day basis and constitute the normal duties of his position rather than hazardous duties which are performed only irregularly and intermittently. Under the statute a pay differential is authorized only for irregular or intermittent duty involving physical hardship or hazard and only then if those factors were not used as a basis for classifying the position.

Clearly the duties for which differential pay is claimed may not under any reasonable view be regarded as "irregular or intermittent" so as to come within the scope of the authorizing statute. Therefore, the disallowance of each of the claims was correct and on review hereby is sustained.

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The record in the present case is not entirely clear on the matter of what consideration was given to the hazardous duties performed by the claimants in the classification of their positions. We find no indication, however, that the classification of the positions involved was ever made the subject of an appeal to the Commission as provided by regulation, 5 CFR 511.601 et seq.

Since questions arising with respect to the classification of positions are matters solely within the jurisdiction of the employing agency (5 U.S.C. 5107) and the Civil Service Commission (5 U.S.C. 5110, 5111, 5112) this Office is without authority to consider or pass upon the validity or propriety of classification actions of executive agencies or to entertain claims for additional pay based upon contentions that classification actions are improper or inappropriate.

Sincerely yours,

For the, Comptroller General
 of the United States